



900 17th STREET, NW, SUITE 400 PH: 202.296.6650
WASHINGTON, DC 20006 FX: 202.296.7585

October 21, 2011

EX PARTE NOTICE

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers,
WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing a Unified Intercarrier Compensation Regime,
CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109**

Dear Ms. Dortch:

As the Commission has recognized, “[f]or competition to thrive, the principle of interconnection—in which customers of one service provider can communicate with customers of another—needs to be maintained.”¹ The Commission has already stated that:

“interconnection obligations of sections 251(a) *and* 251(c)(2) apply to incumbents' packet-switched telecommunications *networks* and the telecommunications services offered over them...[rejecting the argument] that Congress intended that section 251(c) not apply to new technology not yet deployed in 1996. Nothing in the statute or legislative history indicates that it was intended to apply only to existing technology.”²

¹ The National Broadband Plan at 49.

² Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, CCB/CPD No. 98- RM 9244, FCC 99-188, ¶¶48-49 (1998). Subsequently, in the *Advanced Services Remand Order*, the Commission again states that “the interconnection obligations set forth in section 251(c)(2) apply to packet-switched services as

Nonetheless, incumbent local exchange carriers claim they do not have to provide competitors direct interconnection on an IP-to-IP basis, even for facilities-based providers of managed VoIP services, pursuant to Section 251(c)(2) of the Act. The Commission's confirmation, at this time, as to the applicability of section 251(c)(2) is critical in getting ILECs to the negotiating table.

In addition to the CLECs, there is wide-spread recognition from the various sectors of the industry - e.g., cable companies, state commissions, small and rural ILECs, tech companies, and wireless providers – of the need for the Commission to take action with regard to IP-to-IP interconnection. For example:

- Cablevision Systems Corp. and Charter Communications, Inc. ask the Commission to clarify that:

[S]ection 251(c)(2) and the Commission's rules require incumbent local exchange carriers ("ILEC") to accept traffic from an interconnecting provider in IP format (i.e., provide IP-to-IP interconnection)...making explicit the existing statutory requirement of IP-to-IP interconnection will ensure that consumers enjoy the full benefits of IP services and networks, and encourage all carriers to migrate to IP-based networks.³

- Google, while opposing for other VoIP services, recognizes there is merit to "including facilities-based VoIP within the framework of traditional telephony regulation," stating:

In fact, the record before the Commission reflects the recognition by many parties of the clear distinctions between facilities-based [interconnected] VoIP and other VoIP services, including over-the-top VoIP and applications that are offered over the public Internet versus a specialized or managed connection.⁴ ... Google agrees with many diverse parties [citing COMPTTEL] that urge the FCC to address IP interconnection given its growing importance as the transition to all IP continues.⁵

well as circuit-switch services." Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78 98-91, FCC 99-413, ¶22 (1999).

³ Letter of Howard J. Symons, Mintz Levin, to Marlene Dortch, WC Docket No. 10-90 *et al*, p. 1 (filed Oct. 12, 2011).

⁴ Letter of Richard S. Whitt, Google, to Marlene Dortch, WC Docket No. 10-90 *et al*, at 7 (filed Oct. 18, 2011).

⁵ *Id* at 7, n. 28.

- Sprint Nextel states:

[T]he Commission should act to ensure that ILECs provide IP voice interconnection...Sprint and others have been unsuccessful in securing IP voice interconnection from ILECs... ***IP voice interconnection need not be delayed while interconnection standards are developed.*** Sprint and many other companies have IP voice interconnection arrangements with one another even in the absence of standards. The ILECs already interconnect with their affiliates for the provision of IP voice services. These ILECs possess media gateways and other IP infrastructure for use in providing their own VoIP services and their own intra-company IP voice interconnection.⁶

- T-Mobile states:

[T]he Commission needs to ensure that the transition to an IP network is not stymied by an interconnection regime unilaterally established by ILECs and that providers are not prevented from exchanging traffic in an IP format.⁷

- The National Telecommunications Cooperative Association (“NTCA”) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) states:

[F]or [facilities-based VoIP providers] the service as well as the entity offering that service would meet the threshold for seeking regulated interconnection (whether IP or otherwise) pursuant to Section 251.⁸

- The National Association of Regulatory Utility Commissioners (NARUC):

NARUC endorsed the position that a provider “has the right, under Section 251(c)(2) of the Act, to establish direct IP-to-IP interconnection of its facilities-based VoIP service and IP-in-the-middle services with ILEC networks.”⁹

⁶ Reply Comments of Sprint Nextel Corporation, WC Docket No. 11-119 at ii-iii (filed Aug. 30, 2011)(emphasis added).

⁷ Reply Comments of T-Mobile, WC Docket No. 10-90 *et al*, at 6 (filed May 23, 2011).

⁸ Reply Comments of the NTCA and OPASTCO, WC Docket No. 11-119, at 4 (filed Aug. 30, 2011).

⁹ Reply Comments of the National Association of Regulatory Commissioners, WC Docket No. 11-119, at 1 (filed Aug. 30, 2011).

The most market-oriented path to the critical IP-to-IP interconnection arrangements is for the Commission to confirm that IP-to-IP interconnection is subject to Section 251(c)(2) of the statute so that negotiations may begin within this appropriate statutory framework (requiring good faith negotiations, direct interconnection that is equal in quality to that provided to itself, the public filing of agreements reached through negotiation, and the arbitration of issues where the parties cannot agree). There is no need for the Commission to provide any additional guidance to these negotiations at this time. The Commission's pricing standards are reasonably generic. To the extent that they reference a traditional component (for instance, the ILECs' existing "wire center"), there is no reason to expect the parties to disagree about the inapplicability of legacy guidance.¹⁰ More importantly, the Commission's interconnection rules (which may focus on a circuit-switched architecture) are not *limited* to that architecture¹¹ – so negotiations can proceed without further guidance at this time. Moreover, any future rulemaking by the Commission would be better informed by having a history of negotiations (and, if necessary, arbitrations) before developing rules with national application.

Respectfully Submitted

/s/ Karen Reidy

cc (via email): Zac Katz
Angela Kronenberg
Margaret McCarthy
Christine Kurth
Sharon Gillett
Lisa Gelb
Albert Lewis
Marcus Maher
Rebekah Goodheart
William Dever
Jennifer Prime
Melissa Kirkel

¹⁰ See §§ 51.503, 51.505, 51.507 and 51.511. Although §51.509 establishes rate structure guidance for specific circuit-switched components (for instance, local switching), this rule would not impact IP negotiations where most of the architectural components do not apply. In other words, existing rules may provide all the guidance needed because they are sufficiently flexible to accommodate IP technology within the general guidance they provide. If FCC guidance is ultimately needed, the guidance will be better informed after negotiations have begun.

¹¹ For instance, 51.305(a)(2) specifies a *minimum* list of interconnection points that presuppose a circuit switched architecture, but make clear that the interconnection obligation exists at *any* technically feasible point. Consequently, the rules provide the appropriate standard (technical feasibility) which is likely all the guidance required for negotiations. To the extent that a dispute arises as to technical feasibility, the state arbitration process (which typically includes discovery, testimony and cross-examination) is well suited to address the issues. Again, if FCC guidance ultimately is needed, the guidance will be better informed at that point.